

Senate Bill No. 134

CHAPTER 54

An act to amend Section 3097 of, and to add Section 3259.5 to, the Civil Code, relating to private works of improvement.

[Approved by Governor July 14, 2003. Filed with
Secretary of State July 14, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 134, Figueroa. Private works of improvement: liens.

Existing law governs public and private works of improvement. Among other things, these provisions require that a claimant, as defined, provide to a specified person a preliminary 20-day notice prior to the recording of a claim of lien, the filing of a stop notice, or the recovery of a payment bond, in a required manner. These provisions also require that the owner of a work of improvement sign and verify any notice of completion or notice of cessation and that the notice be recorded in the office of the county recorder of the county in which the site is located.

This bill would require that certain statements be included in a preliminary 20-day notice in boldface type in regard to notices of completion or cessation, as specified.

This bill would also require the owner of a private work of improvement to notify, by registered or certified mail, or by first class mail, evidenced by a certificate of mailing, the original contractor, and any claimant who has provided a preliminary 20-day notice prior to the recording of a mechanic's lien or stop notice, that a notice of completion or notice of cessation has been recorded within 10 days of recordation of that notice of completion or notice of cessation. The bill would provide that failure to give notice shall extend the period of time in which the contractor or claimant may file a mechanic's lien or stop notice to 90 days, as specified, and would provide that this extension would be the sole liability incurred for failure to give notice. The bill would define an owner for these purposes, but would exclude from that definition a person who occupies the real property as a personal residence, as specified, among others.

The people of the State of California do enact as follows:

SECTION 1. Section 3097 of the Civil Code is amended to read:
3097. "Preliminary 20-day notice (private work)" means a written notice from a claimant that is given prior to the recording of a mechanic's

lien, prior to the filing of a stop notice, and prior to asserting a claim against a payment bond, and is required to be given under the following circumstances:

(a) Except one under direct contract with the owner or one performing actual labor for wages as described in subdivision (a) of Section 3089, or a person or entity to whom a portion of a laborer's compensation is paid as described in subdivision (b) of Section 3089, every person who furnishes labor, service, equipment, or material for which a lien or payment bond otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, shall, as a necessary prerequisite to the validity of any claim of lien, payment bond, and of a notice to withhold, cause to be given to the owner or reputed owner, to the original contractor, or reputed contractor, and to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.

(b) Except the contractor, or one performing actual labor for wages as described in subdivision (a) of Section 3089, or a person or entity to whom a portion of a laborer's compensation is paid as described in subdivision (b) of Section 3089, all persons who have a direct contract with the owner and who furnish labor, service, equipment, or material for which a lien or payment bond otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, shall, as a necessary prerequisite to the validity of any claim of lien, claim on a payment bond, and of a notice to withhold, cause to be given to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.

(c) The preliminary notice referred to in subdivisions (a) and (b) shall contain the following information:

(1) A general description of the labor, service, equipment, or materials furnished, or to be furnished, and an estimate of the total price thereof.

(2) The name and address of the person furnishing that labor, service, equipment, or materials.

(3) The name of the person who contracted for purchase of that labor, service, equipment, or materials.

(4) A description of the jobsite sufficient for identification.

(5) The following statement in boldface type:

NOTICE TO PROPERTY OWNER

If bills are not paid in full for the labor, services, equipment, or materials furnished or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings, of all or part of your



property being so improved may be placed against the property even though you have paid your contractor in full. You may wish to protect yourself against this consequence by (1) requiring your contractor to furnish a signed release by the person or firm giving you this notice before making payment to your contractor, or (2) any other method or device that is appropriate under the circumstances. Other than residential homeowners of dwellings containing fewer than five units, private project owners must notify the original contractor and any lien claimant who has provided the owner with a preliminary 20-day lien notice in accordance with Section 3097 of the Civil Code that a notice of completion or notice of cessation has been recorded within 10 days of its recordation. Notice shall be by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing. Failure to notify will extend the deadlines to record a lien.

(6) If the notice is given by a subcontractor who has failed to pay all compensation due to his or her laborers on the job, the notice shall also contain the identity and address of any laborer and any express trust fund to whom employer payments are due.

If an invoice for materials or certified payroll contains the information required by this section, a copy of the invoice, transmitted in the manner prescribed by this section shall be sufficient notice.

A certificated architect, registered engineer, or licensed land surveyor who has furnished services for the design of the work of improvement and who gives a preliminary notice as provided in this section not later than 20 days after the work of improvement has commenced shall be deemed to have complied with subdivisions (a) and (b) with respect to architectural, engineering, or surveying services furnished, or to be furnished.

(d) The preliminary notice referred to in subdivisions (a) and (b) shall be given not later than 20 days after the claimant has first furnished labor, service, equipment, or materials to the jobsite. If labor, service, equipment, or materials have been furnished to a jobsite by a claimant who did not give a preliminary notice, that claimant shall not be precluded from giving a preliminary notice at any time thereafter. The claimant shall, however, be entitled to record a lien, file a stop notice, and assert a claim against a payment bond only for labor, service, equipment, or material furnished within 20 days prior to the service of the preliminary notice, and at any time thereafter.

(e) Any agreement made or entered into by an owner, whereby the owner agrees to waive the rights or privileges conferred upon the owner by this section shall be void and of no effect.

(f) The notice required under this section may be served as follows:



(1) If the person to be notified resides in this state, by delivering the notice personally, or by leaving it at his or her address of residence or place of business with some person in charge, or by first-class registered or certified mail, postage prepaid, addressed to the person to whom notice is to be given at his or her residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or at an address recorded pursuant to subdivision (j).

(2) If the person to be notified does not reside in this state, by any method enumerated in paragraph (1) of this subdivision. If the person cannot be served by any of these methods, then notice may be given by first-class certified or registered mail, addressed to the construction lender or to the original contractor.

(3) If service is made by first-class certified or registered mail, service is complete at the time of the deposit of that registered or certified mail.

(g) A person required by this section to give notice to the owner, to an original contractor, and to a person to whom a notice to withhold may be given, need give only one notice to the owner, to the original contractor, and to the person to whom a notice to withhold may be given with respect to all materials, services, labor, or equipment he or she furnishes for a work of improvement, that means the entire structure or scheme of improvements as a whole, unless the same is furnished under contracts with more than one subcontractor, in which event, the notice requirements shall be met with respect to materials, services, labor, or equipment furnished to each contractor.

If a notice contains a general description required by subdivision (a) or (b) of the materials, services, labor, or equipment furnished to the date of notice, it is not defective because, after that date, the person giving notice furnishes materials, services, labor, or equipment not within the scope of this general description.

(h) If the contract price to be paid to any subcontractor on a particular work of improvement exceeds four hundred dollars (\$400), the failure of that contractor, licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, to give the notice provided for in this section, constitutes grounds for disciplinary action by the Registrar of Contractors.

If the notice is required to contain the information set forth in paragraph (6) of subdivision (c), a failure to give the notice, including that information, that results in the filing of a lien, claim on a payment bond, or the delivery of a stop notice by the express trust fund to which the obligation is owing constitutes grounds for disciplinary action by the Registrar of Contractors against the subcontractor if the amount due the trust fund is not paid.



(i) Every city, county, city and county, or other governmental authority issuing building permits shall, in its application form for a building permit, provide space and a designation for the applicant to enter the name, branch, designation, if any, and address of the construction lender and shall keep the information on file open for public inspection during the regular business hours of the authority.

If there is no known construction lender, that fact shall be noted in the designated space. Any failure to indicate the name and address of the construction lender on the application, however, shall not relieve any person from the obligation to give to the construction lender the notice required by this section.

(j) A mortgage, deed of trust, or other instrument securing a loan, any of the proceeds of which may be used for the purpose of constructing improvements on real property, shall bear the designation "Construction Trust Deed" prominently on its face and shall state all of the following: (1) the name and address of the lender, and the name and address of the owner of the real property described in the instrument, and (2) a legal description of the real property that secures the loan and, if known, the street address of the property. The failure to be so designated or to state any of the information required by this subdivision shall not affect the validity of the mortgage, deed of trust, or other instrument.

Failure to provide this information on this instrument when recorded shall not relieve persons required to give preliminary notice under this section from that duty.

The county recorder of the county in which the instrument is recorded shall indicate in the general index of the official records of the county that the instrument secures a construction loan.

(k) Every contractor and subcontractor employing laborers as described in subdivision (a) of Section 3089 who has failed to pay those laborers their full compensation when it became due, including any employer payments described in Section 1773.1 of the Labor Code and regulations adopted thereunder shall, without regard to whether the work was performed on a public or private work, cause to be given to those laborers, their bargaining representatives, if any, and to the construction lender, if any, or to the reputed construction lender, if any, not later than the date the compensation became delinquent, a written notice containing all of the following:

- (1) The name of the owner and the contractor.
- (2) A description of the jobsite sufficient for identification.
- (3) The identity and address of any express trust fund described in Section 3111 to which employer payments are due.
- (4) The total number of straight time and overtime hours on each job.
- (5) The amount then past due and owing.



Failure to give this notice shall constitute grounds for disciplinary action by the Registrar of Contractors.

(l) Every written contract entered into between a property owner and an original contractor shall provide space for the owner to enter his or her name, residence address, and place of business if any. The original contractor shall make available the name and address of residence of the owner to any person seeking to serve the notice specified in subdivision (c).

(m) Every written contract entered into between a property owner and an original contractor, except home improvement contracts and swimming pool contracts subject to Article 10 (commencing with Section 7150) of Chapter 9 of Division 3 of the Business and Professions Code, shall provide space for the owner to enter the name and address of the construction lender or lenders. The original contractor shall make available the name and address of the construction lender or lenders to any person seeking to serve the notice specified in subdivision (c). Every contract entered into between an original contractor and subcontractor, and between subcontractors, shall provide a space for the name and address of the owner, original contractor, and any construction lender.

(n) If one or more construction loans are obtained after commencement of construction, the property owner shall provide the name and address of the construction lender or lenders to each person who has given the property owner the notice specified in subdivision (c).

(o) (1) Each person who has served a preliminary 20-day notice pursuant to subdivision (f) may file the preliminary 20-day notice with the county recorder in the county in which any portion of the property is located. A preliminary 20-day notice filed pursuant to this section shall contain all of the following:

(A) The name and address of the person furnishing the labor, service, equipment, or materials.

(B) The name of the person who contracted for purchase of the labor, services, equipment, or materials.

(C) The common street address of the jobsite.

(2) Upon the acceptance for recording of a notice of completion or notice of cessation the county recorder shall mail to those persons who have filed a preliminary 20-day notice, notification that a notice of completion or notice of cessation has been recorded on the property, and shall affix the date that the notice of completion or notice of cessation was recorded with the county recorder.

(3) The failure of the county recorder to mail the notification to the person who filed a preliminary 20-day notice, or the failure of those persons to receive the notification or to receive complete notification, shall not affect the period within which a claim of lien is required to be



recorded. However, the county recorder shall make a good faith effort to mail notification to those persons who have filed the preliminary 20-day notice under this section and to do so within five days after the recording of a notice of completion or notice of cessation.

(4) This new function of the county recorder shall not become operative until July 1, 1988. The county recorder may cause to be destroyed all documents filed pursuant to this section, two years after the date of filing.

(5) The preliminary 20-day notice that a person may file pursuant to this subdivision is for the limited purpose of facilitating the mailing of notice by the county recorder of recorded notices of completion and notices of cessation. The notice that is filed is not a recordable document and shall not be entered into those official records of the county which by law impart constructive notice. Notwithstanding any other provision of law, the index maintained by the recorder of filed preliminary 20-day notices shall be separate and distinct from those indexes maintained by the county recorder of those official records of the county which by law impart constructive notice. The filing of a preliminary 20-day notice with the county recorder does not give rise to any actual or constructive notice with respect to any party of the existence or contents of a filed preliminary 20-day notice nor to any duty of inquiry on the part of any party as to the existence or contents of that notice.

(p) (1) The change made to the statement described in subdivision (c) by Chapter 974 of the Statutes of 1994 shall have no effect upon the validity of any notice that otherwise meets the requirements of this section. The failure to provide, pursuant to Chapter 974 of the Statutes of 1994, a written preliminary notice to a subcontractor with whom the claimant has contracted shall not affect the validity of any preliminary notice provided pursuant to this section.

(2) (A) The inclusion of the language added to paragraph (5) of subdivision (c) by Chapter 795 of the Statutes of 1999, shall not affect the validity of any preliminary notice given on or after January 1, 2000, and prior to the operative date of the amendments to this section enacted at the 2000 portion of the 1999–2000 Regular Session, that otherwise meets the requirements of that subdivision.

(B) A preliminary notice given on or after January 1, 2000, and prior to the operative date of the amendments to this section enacted at the 2000 portion of the 1999–2000 Regular Session, shall not be invalid because of the failure to include the language added to paragraph (5) of subdivision (c) by Chapter 795 of the Statutes of 1999, if the notice otherwise complies with that subdivision.

(C) The failure to provide an affidavit form or notice of rights, or both, pursuant to the requirements of Chapter 795 of the Statutes of



1999, shall not affect the validity of any preliminary notice pursuant to this section.

SEC. 2. Section 3259.5 is added to the Civil Code, to read:

3259.5. (a) The owner of a private work of improvement shall notify the original contractor, and any claimant other than the original contractor who has provided a preliminary 20-day notice in accordance with Section 3097, that a notice of completion or notice of cessation has been recorded. The notice shall be sent within 10 days after recordation of the notice of completion or notice of cessation. Notification shall be sent by registered or certified mail, or by first-class mail, evidenced by a certificate of mailing. Failure to give notice to a contractor or claimant within 10 days of recording the notice of completion or notice of cessation shall extend the period of time in which that contractor or claimant may file a mechanic's lien or stop notice to 90 days beyond the date that a notice of completion or notice of cessation has been recorded. The sole liability for failing to give notice shall be the extension of the period of time in which that contractor or claimant may file a mechanic's lien or stop notice.

(b) For purposes of this section, "owner" means a person who has an interest in real property, or the person's successor in interest on the date a notice of completion or notice of cessation from labor is filed for record, who causes a building, improvement, or structure, to be constructed, altered, or repaired on the property. If the property is owned by two or more persons as joint tenants or tenants in common, any one or more of the cotenants may be deemed to be the "owner" within the meaning of this section. However, "owner" does not include a person who occupies the real property as a personal residence and the dwelling contains not more than four residential units, nor does it include a person who has a security interest in the property or obtains an interest pursuant to a transfer described in subdivision (b), (c), or (d) of Section 1102.2.

